

REMARKS

Applicant has thoroughly considered the Examiner's remarks in the Office action of October 26, 2006 and respectfully requests reconsideration of claims 1-7, 9, 12-13, and 20. By this Amendment F, claims 1, 4, and 6 have been amended, and claims 11, 15, 17, and 19 have been canceled.

Claim Rejections Under 35 U.S.C. § 112 - Written Description

Claim 17 stands rejected under the written description requirement of 35 U.S.C. § 112 for being directed to a system comprising a plurality of satellites. Claim 17 has been canceled by this Amendment F.

Claim Rejections Under 35 U.S.C. § 103(a)

Claims 1 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Toporek (US 6, 584,083) in view of Haldeman (US 6,801,576), McNabb (US 6,016,120), and Pezzlo (US 6,049,561). Claim 4 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Toporek (US 6,584,083) in view of Haldeman (US 6,801,576) in further view of Pezzlo (US 6,049,561). Applicant submits that the cited references fail to teach or suggest each and every element of the claims as amended.

The Examiner asserts that Pezzlo teaches a webcasting system that adjusts the power with which the satellite transmission signal is transmitted in response to input from a teleport at FIG. 1, Col. 4, Lines 19-63, and Col. 3,

Lines 10-20 (see Office action at pages 9-10). Applicant submits, however, that Pezzlo does not disclose the claimed aspects of the invention. In particular, Pezzlo fails to teach adjusting or assigning a transmission power level to any terminal in response to input from a teleport. FIG. 1 of the cited reference merely shows a satellite enabling communication between a plurality of network terminal modems. Col. 3, Lines 10-20 makes no mention of transmitter power. Col. 4, Lines 19-63 describe each network terminal modem having a predetermined transmission power produced by the power amplifier of the terminal.

The only remaining sections of Pezzlo that even mention transmission power levels state:

"The SPC 21 orders active users in accordance with the following: The center frequencies of the transmitters 15 of the NTMs 12a-12n to be active during SEI.sub.1 are arranged in order of bandwidth; and, if more than one of the transmitters to be active during SEI.sub.1 has the same bandwidth, the center frequencies thereof are arranged in accordance with relative transmitter power, as shown in FIG. 3." Col. 4, Line 64 - Col. 5, Line 26

"The signals produced at the output of the transmit DDS 28 sets the carrier frequencies of the transmit sections of NTM 12a. The information carried by the selected carrier frequency produced by the transmit heterodyning section 30 is fed to a power amplifier 32. The power level of the power amplifier 32 is controlled by a control signal produced by the processor section 20 on line 34." Col. 3, Lines 39-45

Thus, Pezzlo assumes either that the transmission power level of the network terminal modems is not adjustable, or that it is manually adjustable by a user of the terminal and therefore teaches away from adjusting a transmission power level of a portable satellite uplink in response to input from a teleport.

In contrast, the present claims set forth adjusting the transmission power of a portable uplink in response to instructions from a teleport to, for example, maximize reception of the transmitted signal at a satellite (see Application at paragraph [0034]). To this end, claim 1 recites, "the portable satellite uplink adjusts the power with which the satellite transmission signal is transmitted in response to input from the teleport." Claim 4 recites, "the webcasting system adjusts the power with which the satellite transmission signal is transmitted in response to input from the teleport." Claim 6 recites, "adjusting the power with which the satellite transmission signal is transmitted in response to input from the teleport."

Additionally, the Examiner asserts that Pezzlo's teaching of assigning a predetermined value of power to the transmitters does not preclude the initially assigned power to be adjustable, as for any adjusted value an initial predetermined value is needed to start the adjustment operation. According to the Office action, "Pezzlo clearly teaches the power level of the terminals [is] adjustable, as shown on Fig. 2, wherein the power of the transmission amplifier 32 is adjusted by control signal 34, produced by processor 20, see 3:43-45." (see Office action at page 17) The cited portion of Pezzlo states, "The power level of the power amplifier 32 is controlled by a control signal

produced by the processor section 20 on line 34." Contrary to the Examiner's assertion, Pezzlo does not disclose an "adjustment operation" of any kind. Particularly, Pezzlo does not disclose adjusting the power with which a transmission signal is transmitted in response to input from a teleport. Even if the system of Pezzlo does not preclude such an operation, it must positively disclose such an operation to provide grounds for a prima facie obviousness rejection under 35 U.S.C. § 103(a).

Applicant assumes that the Examiner is asserting that Pezzlo inherently discloses adjusting the power of a transmission signal in response to input from a teleport. This would mean that Pezzlo **necessarily** adjusts the power level of an amplifier in response to input from a network terminal modem, which is neither explained nor claimed in Pezzlo and is in fact contrary to the teachings of Pezzlo.

"If the prior art reference does not expressly set forth a particular element of the claim, that reference, still may anticipate if that element is 'inherent' in its disclosure. To establish inherency, the extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.' Continental Can Co. v. Monsanto Co., 948 F.2d 1264, 1268, 20 U.S.P.Q.2d 1746, 1749 (Fed.Cir.1991). 'Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.' *Id.* at 1269, 948 F.2d 1264, 20U.S.P.Q.2d at 1749 (quoting In re Oelrich, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981))." In re Robertson, 169 F.3d 743, 745 (C.A.F.C. 1999).

Thus, an assertion of inherency would be improper because the possibility that the system of Pezzlo may be capable of performing the function of the present invention as claimed is insufficient to establish inherency.

At least in part because the cited references, whether considered separately or together, fail to teach or suggest adjusting transmitter power in response to input from a teleport as set forth by Applicant, claims 1, 4, and 6 are believed to be allowable over the cited art.

Conclusion

In view of the foregoing, Applicant submits that independent claims 1, 4, and 6 are allowable over the cited art. The dependent claims also contain patentable subject matter as explained above. Moreover, claims 2-3, 5, 7, 9, 12-13, and 20 depend from claims 1, 4, and 6 and are believed to be allowable for at least the same reasons as the independent claims from which they depend.

It is felt that a full and complete response has been made to the Office action and Applicant respectfully submits that pending claims 1-7, 9, 12-13, and 20 are allowable over the cited art and that the subject application is now in condition for allowance.

The fact that Applicant may not have specifically traversed any particular assertion by the Examiner should not be construed as indicating Applicant's agreement therewith.

Applicant does not believe that a fee is due in connection with this response. If, however, the

NIOC 7772
PATENT

Commissioner determines that a fee is due, he is authorized
to charge Deposit Account No. 19-1345.

Respectfully submitted,

/Robert M. Bain/

Robert M. Bain, Reg. No. 36,736
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RMB/MAP/lav